SENATE TAXATION
EXHIBIT NO. 16
DATE 3.11.11
BILL NO. SB372

SB372 – A bill to Lower business equipment tax and phase more reduction on state economic growth

__Legal Statement/Testimony of Department of Revenue Chief Legal Counsel, C.A. Daw__

As requested by Senator Lake, the following is written copy of the testimony that was presented to the Senate Taxation Committee by C.A. Daw at the SB372 hearing on March 3, 2011.

I rose to inform the Senate Taxation Committee that there was a connection between SB372 and the 4R Act. The 4R Act is the Railroad Revitalization and Regulatory Reform Act of 1976. That Act prohibits differential property tax treatment between railroads and a comparison class of taxable commercial and industrial property. Sister acts give similar relief to airlines and trucking companies.

The important features of the 4R Act are that lawsuits are authorized in federal court and disputed taxes are escrowed pending the outcome of the litigation, which can be very disruptive to state tax systems. While Class 8 property (which is in the taxable commercial and industrial property comparison group) is still taxable the reduction in rate factors into the formula for railroad valuation and reduces railroad valuation. See MCA 15-25-203(7) and 15-6-145. However, if Class 8 property becomes exempt, then the railroad valuation ratio is no longer calculated using the exempt or low rate property and rises. At that point the railroads will be among a limited number of taxpayers still paying taxes on what would traditionally be considered personal property. If asked, the railroads will contend that they are about 80% personal property. A lawsuit with adverse consequences for Montana could be expected.

Further, it is predictable that either legislative or judicial erosion of the balance of centrally assessed property would then occur, leaving pipelines as the only significant centrally assessed taxpayer because they are likely the only centrally assessed taxpayer with an unarguable predominance of property falling in the traditional classification of real property. The cumulative impact of these changes could easily exceed $100,000,000 per year in Montana. Once Class 8 property tax rates decrease below other classes of property, migration could begin and increase the fiscal impact beyond predictions. In order to forestall or contain these inadvertent effects, significant definitional work in the various other classes of property should take place and include attention to what is defined as real and personal property. Until that work is undertaken, there may be risks in this bill that are not calculated into the projected fiscal impact.